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brings error, plaintiff assigning cross-error on action of trial court requiring him to make a release of \$2,000 of the verdict and accept judgment for \$8,000. Affirmed, and additional judgment for plaintiff for amount which he was required to release.

*Charles E. Plummer* and *J. Gordon Bohannon*, both of Petersburg, for plaintiff in error.

*S. M. Brandt*, of Norfolk, and *R. B. Willcox, Jr.*, of Petersburg, for defendant in error.

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REYNOLDS *v.* WALLACE et al.

June 12, 1919.

[99 S. E. 516.]

1. **Boundaries (§ 47 (1)\*)—Estoppel.**—Where defendant's predecessor in title, who was present when a boundary line was run, did not then offer any objection to the result, but subsequently told his wife that he was unsatisfied and was going to the courthouse to get it settled, held that, as such predecessor became ill shortly thereafter and died without having given the matter further attention, no estoppel was raised which would preclude defendant from questioning the accuracy of the survey made.

[Ed. Note.—For other cases, see 2 Va.-W. Va. Enc. Dig. 604.]

2. **Boundaries (§ 48 (6)\*)—Acquiescence—Effect—Title.**—While acquiescence and admissions as to boundaries may become important evidence in determining where the boundaries are located, and may exist or be made under such circumstances as will estop the landowner from denying them, they are not in themselves independent source of title.

[Ed. Note.—For other cases, see 2 Va.-W. Va. Enc. Dig. 603.]

3. **Appeal and Error (§ 203 (3)\*)—Evidence—Objections.**—Objections that witnesses did not possess the qualifications necessary to render them competent cannot be raised for the first time on writ of error.

[Ed. Note.—For other cases, see 1 Va.-W. Va. Enc. Dig. 600.]

4. **Appeal and Error (§ 1066\*)—Review—Harmless Error.**—Where the parties claimed from a common source of title, and the only controversy was the location of the boundary line, the giving of instructions in an ejectment case that to find for plaintiff the jury must find title in him, and that he must rely on his own title, and not defects in defendant's title, held harmless.

[Ed. Note.—For other cases, see 1 Va.-W. Va. Enc. Dig. 564.]

5. **Appeal and Error (§ 1003\*)—Review—Verdict.**—Where verdict was supported by evidence, though against the preponderance

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\*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.

thereof, it will not be disturbed by the appellate court on writ of error.

[Ed. Note.—For other cases, see 1 Va.-W. Va. Enc. Dig. 620 et seq.]

Error to Circuit Court, Charles City County.

Ejectment by P. J. Reynolds against George W. Wallace and others. There was a judgment for defendants, and plaintiff brings error. Affirmed.

*Henley, Hall, Hall & Peachy*, of Williamsburg, for plaintiff in error.

*Nance & Nance*, of Winston-Salem, N. C., for defendants in error.

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### SCRUGGS *v.* COMMONWEALTH.

June 12, 1919.

[99 S. E. 518.]

1. **Homicide (§ 254\*)—Uxoricide—Evidence.**—On trial for murder of accused's wife, where the defense was suicide, evidence held insufficient to support conviction of murder in the second degree.

[Ed. Note.—For other cases, see 10 Va.-W. Va. Enc. Dig. 120.]

2. **Criminal Law (§ 561 (2)\*)—Proof beyond Reasonable Doubt.**—In a murder trial, the burden rests upon the commonwealth to establish guilt beyond a reasonable doubt, either by direct or circumstantial evidence.

[Ed. Note.—For other cases, see 4 Va.-W. Va. Enc. Dig. 75.]

3. **Criminal Law (§§ 419, 420 (11)\*)—Hearsay Evidence.**—In a trial for murder of accused's wife, the only motive suggested being that accused owed deceased money, evidence of statement in conversation of deceased with a witness, not in the presence of accused, that accused "owed her some money and had to pay it back to her, and that when she was \* \* \* on a visit" accused "wrote her that some one had broken in \* \* \* and stolen his money," was inadmissible under the hearsay rule.

4. **Criminal Law (§§ 419, 420 (1)\*)—Hearsay Evidence—Motive.**—Motive can no more be proved by hearsay evidence than any other fact.

[Ed. Note.—For other cases, see 7 Va.-W. Va. Enc. Dig. 49.]

Error to Circuit Court, Campbell County.

Thomas S. Scruggs was convicted of murder in the second

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